STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN OPPOSITION TO HOUSE BILL 14
(Regards Equal Parental Time and Responsibilities for a Child)

Before the House Families and Aging Committee
Representative Jean Schmidt, Chair
March 21, 2023

Chairwoman Schmidt, Vice Chair Miller, Ranking Member Denson, and members of the House Families and Aging Committee: On behalf of the Ohio State Bar Association ("OSBA"), thank you for the opportunity to submit testimony in opposition to House Bill 14.

I am Eric W. Johnson, OSBA Certified Specialist in Family Relations Law. I have maintained in good standing my license to practice law in the State of Ohio since 1995 and have practiced almost exclusively in the field of family law for the past 19 years. I am a past Chair of the OSBA Family Law Committee and continue to actively participate in numerous family law related committees of the Supreme Court of Ohio and state and local bar associations.

The OSBA has voted unanimously across the board to oppose House Bill 14. This bill relies not only on faulty premises but, even assuming those premises were true, will not achieve the goals it was drafted to accomplish. Further, it will greatly increase the litigation and acrimony present in our state's domestic relations courts, causing the greatest harm to Ohio's children.

Continually Rejected by States and the Family Law Community

Once again, the General Assembly is being asked to impose equal parenting time upon couples who find themselves in the family courts of this state. This biennial exercise has been repeatedly promoted for years by small special interest groups who would sacrifice the interests of Ohio's children in favor of a misguided notion of parental entitlement. It would be the hope of this legislation's proponents that, one day, they may catch this legislature unaware of the continuous rejection of their past proposals.

Contrary to the implication of some, House Bill 14 is not the embodiment of an equal parenting time movement sweeping the nation. Proposals to mandate equal parenting time have circulated throughout the statehouses of this country for more than a decade with the same resounding result—states recognize that the need to promote and protect a child's interests is more important than creating a right of parental entitlement. By rough count, well over thirty (30) states have considered and rejected similar proposals in the past five years alone.

Similar legislation in the few Appalachian states that have passed some form of presumptive equal parenting time laws has been rushed through their legislatures, causing one to ask whether the impact of those bills were thoroughly considered. Arkansas took barely four months from introduction to signing by the governor to pass its bill. West Virginia took just three months, and Kentucky only considered such legislation for two months before passage.

And of the states touted by some of the proponents of this bill as having adopted the equal parenting time premise of H.B. 14, only Kentucky and West Virginia have passed legislation calling for a presumption, rebuttable by only a preponderance of the evidence, that equal time is not in the *"best interests*" of the child. The state of Arkansas makes no presumption of equal time at all; it only presumes that "joint custody" is in the best interests of a child.

Quickly passing bills through an unwary and unsuspecting legislature should not imply that the proposed law is any good. Ohio's children deserve more thoughtful consideration.

H.B. 14 creates a "cookie-cutter" solution to the issue it purports to address, ignoring the enlightened and modern solutions created by other states. Concerned that shared parenting is not a primary consideration for the courts? Enact a strong policy statement declaring the importance of shared parenting and that it be considered first by the court (like Arizona). Concerned a parent's voice is not being heard in the courtroom? Mandate that a court issue findings of fact and conclusions of law explaining why shared parenting and equal time were not granted (like Oregon or Missouri). Concerned a court's standard parenting time schedule will not result in a favorable order? Allow your state to create a statewide standard schedule, with the involvement of family law stakeholders, that promotes shared parenting and maximization of parenting time for both parents (like Indiana).

Faulty Premises

The primary mistaken premise upon which this legislation is based is that the current system of allocating parental rights is in need of major repair. This is not the case. Without doubt, some parents, especially unrepresented ones from underserved communities, understandably perceive "the system" as being stacked against them from the start. Some parents in other cases feel as though the courts failed them and that everyone else is to blame if they did not get their way. But essentially predetermining the outcome of every parenting dispute is not the way to responsibly address these problems. Each parent is entitled to enter the courtroom at the same starting point. But this cannot be accomplished by starting them at the finish line together, circumventing this state's role as *parens partiae* over Ohio's children.

The second mistaken premise is that H.B. 14 creates long overdue shared parenting in this state. This mistake is due to people's tendency to confuse "shared parenting" with "equal time" or some form of a parent's "equal rights." Ohio has statutorily embraced shared parenting as a cooperative co-parenting arrangement since 1991, and even before that under the name of "joint custody." To imply cooperative parenting is not a long-recognized concept by our court system is incorrect. Ohio's courts have strongly encouraged co-parenting—as joint custody and then shared parenting—for decades.

Increases Litigation

Attorneys rarely relish parenting disputes. They are long and often rancorous cases exacting a substantial financial and emotional toll on the parties, their children, and most others involved, including counsel. It is difficult, exhausting work, and H.B. 14 will greatly increase the amount of conflict in contested parenting cases by discouraging settlement. A party enjoying the benefit

of a presumptive outcome has little reason to negotiate; the party who is not advantaged by the presumption will fight even harder when pursuing what they believe to be best for their child. And, because of the "detrimental to the child" standard employed by H.B. 14, battles over the need for psychological examinations and custodial evaluations in contested cases will increase significantly.

Support for this state's children will also be significantly impacted. H.B. 14 promotes parents to trade "dollars for days" when it comes to child support. Without doubt, many parents who are disinterested in equal parenting time will nevertheless continue to pursue it until the other parent agrees to a significant reduction in child support. Not only does the amount of litigation increase, but Ohio's children are again the innocent victims.

Further, countless parents in some way dissatisfied with their current parenting arrangements (or the amount of child support being paid) will immediately return to the courts if H.B. 14 was enacted. By changing the focus away from the best interests of Ohio's children and creating a brand new "detrimental to the child" standard, H.B. 14 encourages parties to seek modifications of their current parenting orders, whether issued five years ago, twelve months ago, or last week. Courts will have to review all prior orders under the new presumptive standard. The floodgates will open.

Inapplicable to Many Cases

A significant percentage of parenting disputes do not involve divorcing parents. Often, they involve situations where the parties never intended to become parents in the first place. H.B. 14 almost entirely ignores the children of these relationships and will impose "equal decision-making" and "equal parenting time" in all cases where the parties were never married to each other, regardless of:

- whether paternity has been established,
- whether a parent wants equal time,
- whether a parent has any established relationship with the child at all,
- whether a parent is seeking parenting time only as leverage in a support case.

The automatic and indiscriminate imposition of equal time also fails to consider many families' post-separation situations. H.B. 14 haphazardly applies to children of all ages, whether they are nursing, toddlers, or graduating teens. It fails to consider that children often become involved in one or two blended families, with step- and half-siblings (who may also be subject to unique parenting schedules themselves). It illogically presumes what is best for a child who is born as the result of an extramarital affair, especially when that child is forming established relationships with brothers and sisters.

Undefined, Unachievable Standards

What does "equal parenting time" look like? Is it every other week, every other day, every other hour? Is it two overnights per week to each parent and a split of weekends? It is all of these

things! H.B. 14 solves nothing but dividing children as though they were bank accounts. Even if the premise of "equal time" is accepted, parents will continue to litigate what form it should take.

"Equal decision-making" is no better. Does this bill contemplate that two parents who cannot reasonably speak with each other will have to discuss and agree with every parenting decision before it is implemented? Will parents have to agree on such things as a child's bedtime in their respective households, the child's breakfast diet, when the child can begin spending overnights with friends, or when to get a child a cell phone? H.B. 14 invites judicial intervention to resolve such questions when parents do not agree and parties will be returning to the courts to address minor parenting conflicts in ever-increasing numbers.

Finally, the term "detrimental" is left to broad interpretation in the context of this bill. Worse still, H.B. 14 appears to impose an impossible burden on a parent trying to rebut its arbitrary presumption by proving a negative. Parents, attorneys, and courts are given no guidance whether the standard that must be shown is that equal time and/or equal decision making are "not in the child's best interests," cause "concern for the well-being" of a child, or are "substantially certain to cause irreparable harm" to a child. Must a parent attempting to show a clear case of detriment still have to present expert testimony on the issue? The interpretation of "detriment" is once again left to be litigated throughout the courts of this state.

Summary

House Bill 14 is a misguided attempt to address the perception that parents are treated unequally in this state's courts. There are better ways to address this perception. It will remove the critical discretion necessary when determining what is best for Ohio's children in the most highly contested cases, when it is needed the most. No matter how well intended, it will greatly increase not only the amount, but also the intensity of parenting disputes. It applies a tragically simplistic and overbroad standard in all cases, whether divorce, post-decree modifications, or private custody actions.

For these reasons, and for so many others, the states of this country have repeatedly and soundly rejected the idea that equal parenting time and decision-making should be legislatively mandated.

Thank you for permitting me to offer this written testimony in opposition to H.B. 14. As such, I strongly encourage this Committee to not favorably report this bill.

I remain available to answer questions at any time should this Committee have any for me.

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